

## Surface Mining Reclamation and Enforcement, Interior

## § 938.16

Original amendment submission date	Date of final publication	Citation/description
May 23, 2006 .....	April 17, 2007 .....	25 Pa. Code: 86.187(a)(1), (b), (c); 86.188(b)(5) [deleted]; 86.188(c)(3) [deleted]; 86.189(c)(2) through (c)(4) [deleted reference to (c)(5)]; 86.189 (c)(5) [deleted]; 86.190 (a) [the words "but are not limited to" are deleted]; 86.190(a)(3) [deleted].
December 18, 2006 .. June 8, 2006 .....	October 4, 2007 ..... December 1, 2008 ..	25 Pa. Code 86.6 [add]. 25 Pa. Code 210.11, 87.1, 88.1, and 89.5 added definition for mine opening blasting; 87.124(b) correction of reference error; 87.126(b)(2)(ii) phrase deletion; 87.127(b), 87.127(e), 87.127(e)(1), 87.127(f)(1); 87.129(4); 88.135(a), 88.135(b), 88.135(f)(1), 88.135(h), 88.135(i); 88.493(7)(i); 89.62 (adding new language); 87.127(l) and 88.135(l) (deleted in their entirety).
August 1, 2008 .....	August 10, 2010 .....	52 P.S. 1396.4(d.2); 25 Pa. Code 86.1, 86.17(e), 86.187(a); The Conversion Assistance Program; Trust Funds as an Alternative Bonding System (ABS); Demonstration of Sufficient Funding for Outstanding Land Reclamation at Primacy ABS Forfeiture Sites; and, Demonstration of Sufficient Funding for Construction of All Necessary Discharge Treatment Facilities at the ABS Forfeiture Sites.

[62 FR 9953, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 938.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 938.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following proposed program amendments by the dates specified.

(a)–(e) [Reserved]

(f) By August 24, 1987, Pennsylvania shall amend its regulations at 88.129(f)(1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

(g) [Reserved]

(h) No later than October 12, 2010, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to ensure that its program provides suitable, enforceable funding mechanisms, that are sufficient to guarantee coverage of the full cost of land reclamation at all sites originally permitted and bonded under the ABS.

(i)–(l) [Reserved]

(m) By November 1, 1991, Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the

value of all government securities pledged as collateral bond shall be determined using the current market value.

(n) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

(o) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

(p)–(v) [Reserved]

(w) By November 1, 1991, Pennsylvania shall amend §§ 87.125(a), or otherwise amend its program to be no less stringent than section 515(b)(15)(E) of SMCRA to provide the opportunity to request a preblasting survey to every resident or owner of a man-made structure or dwelling within one-half mile of any part of the permit area.

(x)–(qq) [Reserved]

(rr) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.36(c) to require permit denial for unabated violations of any Federal or State program under SMCRA, without the three-year limitation.

(ss) [Reserved]

(tt) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to include language that would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(c), to require that the regulatory authority's reconsideration of its decision to approve the permit include a review of information, updated for the period from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(yy) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.43, to require the regulatory

authority to review the circumstances under which a permit was issued whenever it has reason to believe that the permit may have been improvidently issued.

(zz) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.62(b)(2)(ii) to correct the cross-reference to 86.63 with a reference to section 86.212(c).

(aaa) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for each such permit.

(bbb) [Reserved]

(ccc) By October 5, 1993, Pennsylvania shall submit a proposed amendment to § 86.133(f) to require that exploration on areas designated as unsuitable for mining shall be subject to permitting requirements no less effective than the Federal regulations at 30 CFR 772.12.

(ddd)-(ggg) [Reserved]

(hhh) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§ 87.155(b)(5), 89.86(e)(2)(iii)(B) and 90.159(b)(3) to require that at least 80 percent of the trees and shrubs to be used in determining the success of stocking and adequacy of planting, at the time of bond release, have been in place for 60 percent of the applicable minimum period of responsibility.

(iii) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§ 87.112(c) and 89.111(c) to require a seismic safety factor of at least 1.2 for all impoundments that meet the criteria of 30 CFR 77.216(a) or are located where failure could cause loss of life or serious property damage.

(jjj) By October 5, 1993, Pennsylvania shall submit a proposed amendment to § 90.112(c)(2) to require that all impounding structures that meet the criteria of 30 CFR 77.216(a) and are either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway capacity and/or storage capacity to safely pass or control the runoff from the 6-hour PMP or greater precipitation event.

(kkk) and (lll) [Reserved]

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(mmm) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

(nnn) By September 19, 1994, Pennsylvania shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise section 86.159(l)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

(ooo) [Reserved]

(ppp) By January 6, 1998, Pennsylvania shall submit a proposed amendment to section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(qqq) [Reserved]

(rrr) By January 6, 1998, Pennsylvania shall submit a proposed amendment to subsections 87.108(c), 89.24(c), and 90.108(c), or otherwise amend its program, to require, without exception, that sedimentation ponds cannot be removed sooner than two years after the last augmented seeding.

(sss) By January 6, 1998, Pennsylvania shall submit proposed amendments to subsections 88.105(c), 88.201(c) and 88.305(c), or otherwise amend its program, to require additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies.

(ttt) By January 6, 1998, Pennsylvania shall submit a proposed amendment to sections 88.321 and 90.133, or

otherwise amend its program, to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

(uuu) By January 6, 1998, Pennsylvania shall submit a proposed amendment to provide counterparts to the Federal regulations at 30 CFR 702.15 (d), (e), (f) and 702.17 (c)(2) and (c)(3) to require that authorized representatives have the right to enter operations conducting incidental coal extraction and that administrative reviews of the State's determinations be conducted.

[50 FR 32849, Aug. 15, 1985 and 50 FR 45823, Nov. 4, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §938.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### §938.20 Approval of Pennsylvania abandoned mine land reclamation plan.

The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Bureau of Abandoned Mine Reclamation, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17105-2063.

(b) Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

[59 FR 17930, Apr. 15, 1994]

### §938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.